



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA FAX (202-672-5399) and FIRST CLASS MAIL MAY 29 2012

Cleta Mitchell, Esq.
Foley and Lardner, LLP
3000 K Street, NW, Suite 600
Washington, DC 20007

RE: MUR 6503
Frank Guinta

Dear Ms. Mitchell:

On October 18, 2011, the Federal Election Commission notified your client, Frank Guinta, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 22, 2012, the Commission found, on the basis of the information in the complaint, and information provided by your client, that there is no reason to believe Frank Guinta violated 2 U.S.C. § 441i(e). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Margaret Ritzert Howell, the attorney assigned to this matter, at 202-694-1650.

Sincerely,

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Frank Guinta

MUR: 6503

I. GENERATION OF MATTER

This matter was generated by a complaint filed by Ray Buckley and the New Hampshire Democratic Party. See 2 U.S.C. § 437(g)(a)(1).

II. FACTUAL AND LEGAL ANALYSIS

A. Facts

The *New Hampshire Union Leader* reported that the Republican Party of New Hampshire ("State Party") held two fundraising meetings on August 19, 2011, attended by New Hampshire state and federal officeholders, including Representative Frank Guinta. See Attachment 1, John DiStaso, *GOP Officials Told Kimball Donors Were Concerned About "Disarray,"* N.H. Union Leader, Aug. 26, 2011. According to the article, the first meeting was a conference call between Congressman Guinta, Congressman Charlie Bass, U.S. Senator Kelly Ayotte, New Hampshire Speaker of the House William O'Brien, and New Hampshire Senate President Peter Bragdon. The article cites an unnamed source "familiar with [the] conference call" who stated that, during the call, "the subject of party fund-raising difficulties was discussed" and that "Guinta mentioned that he . . . he had been hoping 'to get up to \$100,000 from the Republican Governors Association.'" ¹ *Id.* The article also reported that, following the conference call, there was a second, face-to-face meeting where the fundraising issue was discussed further. The unnamed source was reportedly present at this meeting, which was attended by O'Brien, New Hampshire

¹ The Republican Governors Association ("RGA") is a section 527 organization, the primary mission of which is to "help elect Republicans to governorships throughout the nation." See www.rga.org. The RGA is not registered as a political committee with the Commission, and is able to accept funds that do not comply with the limitations and prohibitions the Act imposes on political committees.

1 State Party Chairman Jack Kimball, and “a former Kimball supporter and congressional hopeful
2 Jennifer Horn.” *Id.* During the meeting O’Brien reportedly informed Kimball that “party
3 leaders’ requests for donations were being refused” and, when asked for an example, “O’Brien
4 mentioned that he had been told by Guinta that the RGA had refused a donation request.” *Id.*
5 According to the source, “O’Brien told him that they ‘could not even begin the conversation’
6 with the RGA ‘because of Jack’s inability to run this party competently. And that’s as far as it
7 went.’” *Id.*

8 Based on the account of the fundraising meetings, the complainant alleges that
9 Congressman Guinta violated 2 U.S.C. § 441i(e) and 11 C.F.R. §§ 300.61 and 300.62 by
10 soliciting funds from the RGA for the State Party outside the limitations and prohibitions set
11 forth in the Federal Election Campaign Act of 1971, as amended (“the Act”).

12 In the Response, Congressman Guinta denies the allegations, which he says are “totally
13 false.” He claims that the complaint rests on “an erroneous news article containing hearsay
14 repor(s) [*sic*] of alleged conversation(s) that never took place.” Response at 1. His Response
15 includes a sworn affidavit explicitly stating that he “never initiated any contact(s) with the
16 Republican Governors Association” and “never solicited contribution(s) from the RGA for any
17 purpose.” Guinta Affidavit dated November 4, 2011. In response to a request for clarification
18 from the Office of the General Counsel, counsel for Congressman Guinta stated that he has
19 “never had any communications or contacts with anyone at or representing the RGA other than
20 [a] brief introduction at the airport” by a mutual acquaintance, which was “wholly non-
21 substantive and consisted purely of pleasantries.” Letter from Cleta Mitchell, Counsel to
22 Congressman Frank Guinta, to Kathleen Guith, Deputy Associate General Counsel, Federal
23 Election Commission (April 17, 2012).

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1 A review of the RGA's 2011 year-end tax filing (IRS Form 8872) does not disclose any
2 contributions made to the State Party between July 1, 2011 and December 31, 2011. Nor does
3 the State Party's 2011 Year-End Report, filed with the Commission and covering the same time
4 period, show any contributions received from the RGA.

5 **B. Legal Analysis**

6 Based on the factual account depicted in the newspaper article, Complainant alleges that
7 Congressman Guinta violated 2 U.S.C. § 441i(e) and 11 C.F.R. §§ 360.61 and 300.62 by
8 soliciting funds for the State Party that do not comply with federal source restrictions and
9 contribution limits. According to the complaint,

10 As the press reports indicate, Rep. Guinta personally solicited illegal funds for the
11 State Party. Rep. Guinta's own remarks show that he solicited a contribution of
12 up to \$100,000 from the RGA, as well as contributions from other groups, for the
13 State Party. The solicited contribution would have exceeded the federal limits,
14 and would have consisted of federally impermissible funds, including corporate
15 treasury funds.
16 Complaint at 3.²

17 Under the Act, candidates or individuals holding federal office, or their agents
18 (collectively, "covered persons"), may not solicit funds in connection with a non-federal election
19 unless the funds are not in excess of the amounts permitted in 2 U.S.C. § 441a(a) and are not
20 from prohibited sources. 2 U.S.C. § 441i(e)(1)(B), 11 C.F.R. §§ 300.61 and 300.62.
21 Corresponding provisions prohibit covered persons from soliciting funds for a political
22 committee established and maintained by a state committee of a political party in any calendar
23 year which, in the aggregate, exceed \$10,000. 2 U.S.C. § 441a(a)(1)(D). Pursuant to
24 Commission regulations, "to solicit means to ask, request, or recommend, explicitly or

² The complaint also includes unsupported mention of Guinta allegedly contacting several national groups for money in addition to RGA. Because these bald allegations have no support, we focus our analysis on the factual allegations regarding the RGA. In addition, we note that the Act does not preclude Guinta from soliciting funds in connection with non-federal elections for the State Party; such solicitation must simply be confined to amounts and sources that comply with the limits and prohibitions of the Act. See 2 U.S.C. § 441i(e)(1)(B).

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1 implicitly, that another person make a contribution, donation, transfer of funds, or otherwise
2 provide anything of value.” 11 C.F.R. § 300.2(m).

3 As a federal officeholder and federal candidate, Congressman Guinta is a covered person
4 pursuant to 2 U.S.C. § 441i(e)(1)(B). Consequently, he is prohibited from soliciting funds in
5 connection with a non-federal election in amounts exceeding the limitations of the Act. For state
6 political committees like the New Hampshire Republican Party, the federal contribution limit is
7 \$10,000 per year. Therefore, if Congressman Guinta solicited \$100,000 from the RGA, as
8 alleged, he would have violated 2 U.S.C. § 441i(e)(1)(B).

9 The Commission will find “reason to believe” in matters only where the available
10 evidence is at least sufficient to warrant conducting an investigation and where the seriousness of
11 the alleged violation warrants either further investigation or immediate conciliation. *See*
12 Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the
13 Enforcement Process, 72 Fed. Reg. 12,545 (March 16, 2007). Here, the available information is
14 not sufficient to establish reason to believe that Congressman Guinta engaged in the alleged
15 conduct in violation of the Act.

16 The core of the complaint’s allegation rests on unreliable double hearsay: a newspaper
17 article quoting “unnamed sources.”³ By contrast, Congressman Guinta provides a sworn
18 affidavit flatly denying the allegations: “the allegations in the complaint are false . . . I never
19 initiated any contact(s) with the Republican Governors Association . . .” and “never solicited
20 contribution[s] from the RGA for any purpose.” *See* Guinta Affidavit.

³ The article’s report on the conference call may actually be based on triple hearsay. It is unclear whether the unnamed source that provided the information about Congressman Guinta’s purported statements during the conference call was actually present on the call. The newspaper article states only that the source “was also *familiar with* [the] conference call.” DiStaso at 1 [emphasis added]. In contrast, the article specifically notes that the source actually attended the face-to-face meeting. *Id.*

1 The allegations in this newspaper article -- when viewed alongside the sworn denial of
2 Congressman Guinta -- simply do not provide an adequate foundation for a finding that there is
3 reason to believe that Congressman Guinta violated the Act. *See, e.g., Buchanan v. FEC*, 112 F.
4 Supp. 2d 58, 72 (D.D.C. 2000) ("the [Commission] is expected to weigh the evidence before it
5 and make credibility determinations in reaching its ultimate decision"). Accordingly, the
6 Commission found no reason to believe that Congressman Frank Guinta violated 2 U.S.C.
7 § 441i(e).